IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 31 OF 2002

Shri Ladu Pandurang Korgaonkar
R/o. H.No. 135,
Industrial Estate,
Bicholim, Goa. .... Appellant

V/s

1. Shri Mahadev Anta Kambli
R/o. Industrial Estate,
Bicholim, Goa.

2. Shri Shamsundar Narayan Kambli
R/o. Industrial Estate,
Bicholim, Goa.

3. Smt. Rukmini Keshav Kambli
W/o. Keshav Kambli,
Industrial Estate,
Bicholim, Goa.

4. Shri Ashok alias Morto Bablo Kambli
R/o. Industrial Estate,
Bicholim, Goa.

5. Shri Gurudas Korgaonkar,
IInd floor, Trinity Apartments,
Near Market Complex,
Bicholim, Goa.

6. Kum. Bharati Pandurang Korgaonkar,
R/o. Industrial Estate,
Bicholim, Goa. .... Respondents

Shri J. Godinho, Advocate for the Appellant.
Shri M.S. Joshi, Advocate for Respondents No. 1 to 4
Shri A.D. Bhobe, advocate for Respondents No. 5 and 6.

CORAM : **R.S. MOHITE, J.**
DATE : **6th JULY, 2007**

ORAL JUDGMENT

Admit. By consent, the matter is heard.

2. This is a Second Appeal impugning orders of the lower Courts dismissing a suit for non-prosecution. I perused the order passed by Civil Judge Junior Division, Bicholim. It appears from the order that the plaintiff took several adjournments. When the suit came up for hearing on 3/07/1999, Advocate withdrew his wakalatnama. Matter was adjourned to 6/07/1999. On that day plaintiff was without Advocate and he refused to lead evidence without lawful excuse and, therefore, suit came to be dismissed with costs. This order has been confirmed in appeal.

3. I heard both sides. It is contended that plaintiff had met with an accident and was unwell for a long period of time. Be that as it may in the interest of justice I am inclined to allow this Second Appeal subject to heavy costs. The Appeal is therefore allowed. Order passed by the Civil Judge Junior Division, Bicholim in Regular Civil Suit No. 64/95/B as well as appellate Court order passed by the District Judge, Panaji in Regular Civil Appeal No. 129 of 2001 are set aside and Regular Civil Suit No. 64/95/B is restored to file subject to payment of costs of Rs. 10,000/- payable to Respondents No. 5 and 6, who are the contesting Respondents. The costs will be paid within a period of sixty days. It is made clear that the payment of costs is condition precedent to further proceedings in Suit. If the costs are not paid within sixty days, the suit will be dismissed by the trial Court. Second Appeal disposed of.

R.S. MOHITE, J.

NH/-